

**SLATTERY THOMPSON  
SOLICITORS**

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OUR REF: PJL

15<sup>th</sup> December 2023

Mr Stonis

Dear sir

Re Your Matter

We enclose herewith our fees together with a copy of the Motor Accident Cost Regulations 2015, assessment decision & schedule of regulated costs

Memorandum of fees - Slattery Thompson ABN 77 987 977286

To our costs of acting in this matter pursuant to schedule Table A column 1 stage 5

- |  |            |
|--|------------|
| 1. Base amount costs at  | \$ 13,392  |
| 2. Plus 2cents for each dollar over \$ 100,000 verdict monies being \$ 310,929.40 being a further amount of costs at | \$ 6218.58 |
| 3. & 2cents for each dollar awarded being \$ 410,929.40 which is costs of  | \$ 8218.58 |
| 4. costs of conference directly related to assessment of conference  | \$ 990     |

We accordingly assess our fees at \$ 13,392, \$ 6218.58, \$ 8218.58 & 990 making a total of \$ 28,819.16 plus GST 2881.91 being \$ 31,701.07

We estimate that the fees awarded of \$ 41,319.30 less \$ 31,701.07 belong to you which is an amount of \$ 9,618.23 is in respect of medical report fees paid by you and legal costs for your former solicitors who arranged the medical disputes appointment with the Personal Injuries Commission

Yours faithfully  
**SLATTERY THOMPSON**

**SCHEDULE OF REGULATED COSTS – INSURER’S POSITION**  
**MOTOR ACCIDENTS COMPENSATION ACT 1999 (NSW)**

**CLAIMANT**  
**INSURER**  
**MOTOR VEHICLE ACCIDENT**  
**PIC MATTER NUMBER**

**ALFONSAS STONIS**  
**QBE INSURANCE (AUSTRALIA) LIMITED**  
**30 MARCH 2015**  
**APP-10268809**

SCHEDULE 1, CLAUSE 1, TABLE A	AMOUNT
Stage 1	Nil
Stage 2	Nil – claim form served directly by the claimant
Stage 3	Nil – claim form served directly by the claimant
Stage 4 or 5 or 6 <i>4, 5, + 6.</i>	To be determined
<b>Subtotal</b>	<b>\$0.00</b> plus Stage 4 or 5 or 6 plus GST
SCHEDULE 1 CLAUSE 2, TABLE B	AMOUNT
Medical disputes under Part 3.4 of the Act: <ul style="list-style-type: none"> <li>Assessor Matthew Jones – examination on 27 August 2019;</li> <li>Assessor Wayne Mason - examination on 17 March 2021;</li> <li>Review Panel – examination on 29 August 2022.</li> </ul>	\$2,500 plus GST (maximum)
Representation at assessment conference	Nil as the claimant has not instructed counsel to appear at the assessment conference based on the PIC message from the claimant’s solicitors dated 23 June 2023.
Cost of conference directly related to an assessment of the claim	Insurer allows \$300 x 3 hours - \$900 plus GST
<b>Subtotal</b>	<b>\$3,400 plus GST</b>

**Schedule 2- Maximum Fees for Medico-Legal Services**

MEDICAL REPORTS	REGULATED COST	AMOUNT PAID
Dr Sikander Khan, general surgeon – examination on 11 October 2018	\$1,200 plus GST	Not disclosed
Dr Peter Anderson, consultant psychiatrist – examination on 3 July 2020	\$1,200 plus GST	Not disclosed

<p>Dr Peter Anderson, consultant psychiatrist – supplementary report dated 23 July 2020</p>	<p>\$800 plus GST</p>	<p>Not disclosed</p>
<p>Dr John Roberts, psychiatrist – medical examination on 4 February 2019 (Not provided in the claimant’s bundle)</p>	<p>Disputed – the insurer accepts the regulated costs of the claimant’s other medico-legal psychiatrist, Dr Peter Anderson.</p>	<p>Not disclosed</p>
<p>Mr Stephen Sutton, treating psychologist – undated medical report (document 19, pages 181 to 186 of the claimant’s bundle of documents)</p>	<p>\$800 plus GST</p>	<p>Not disclosed</p>



## PERSONAL INJURY COMMISSION

### MOTOR ACCIDENTS DIVISION

#### CLAIMS

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<b>Matter number:</b>	APP-10268809
<b>Claimant:</b>	Alfonas Stonis
<b>Insurer:</b>	QBE
<b>Member:</b>	Hugh Macken
<b>Report date:</b>	3 July 2023
<b>Conference date:</b>	28 June 2023
<b>Conference type:</b>	In person hearing
<b>Representation</b>	<b>claimant:</b> Mr Peter Livers – Slattery Thompson
	<b>insurer:</b> Mr John Ryan instructed by Mr Timothy Ceballos – McInnes Wilson Lawyers NSW

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#### ASSESSMENT CONFERENCE REPORT

#### CERTIFICATE OF DETERMINATION

*Issued under section 94 (5) of the Motor Accidents Compensation Act 1999*

*Assessment of Claim for Damages made in accordance with section 94 of the Act*

1. I assess the Claimant's legal costs and disbursements in accordance with s 149 and 150 of the Act and the Motor Accidents Compensation Regulation 2015 in accordance with the attached sheet in the sum of **\$41,319.30**.
2. On the issue of liability for the claim, QBE's insured owed a duty of care to the Claimant, breached that duty of care and the Claimant sustained injury loss and damage as a result of that breach of duty.

3. **Under sub-sections 94 (3) and 94 (4) of the *Motor Accidents Compensation Act 1999* (the Act), I specify the amount of damages for this claim as **\$410,929.40**.**
4. Attached to this certificate are reasons for my assessment.

## **BACKGROUND**

1. The claimant is a 48 year old man who was injured in a motor vehicle accident which occurred on 30 March 2015. He was riding a bicycle when he was struck by a vehicle turning across his line of travel. The vehicle struck him and he was thrown onto the bonnet of the vehicle. The insurer has admitted breach of duty of care with no allegation of contributory negligence.
2. The claimant's injuries have been assessed as being over the 10% whole person impairment threshold. Accordingly, the matters requiring assessment are limited to non-economic loss, past and future treatment expenses and past and future economic loss.
3. The claimant originally sought to claim voluntary unpaid domestic assistance consequent on his injuries but, quite appropriately, the claim for domestic assistance was abandoned at the assessment conference.
4. At its heart this claim is one for non-economic loss and economic loss consequent on a psychiatric injury. Specifically, the finding of the review panel dated 30 September 2022 which concluded that the claimant:

"suffers from a psychological injury described as post-traumatic stress disorder and persistent depressive disorder with major depressive episodes".

5. This report determined a degree of impairment caused by the motor accident of 16%.
6. There are numerous complexities which the insurer submitted ought to give rise to only a finding of a modest figure for non-economic loss and no other heads of damage. This was based on both medical factors, including pre-existing psychological difficulties, and findings in respect to the claimant's credit and credibility which, the insurer submits, colours all aspects of the claimant's evidence and accordingly ought reduce the claims for treatment and economic loss to zero.
7. Noting these factors it is appropriate to deal with the credit and credibility of the claimant and the medical material prior to the assessment of the specific heads of damage.

## The claimant

8. The claimant provided 3 statements in this matter dated 29 April 2019, 29 April 2023 and 22 June 2023. These statements seek to provide his story, details of the accident and its sequelae and a detailed critique of the report of Dr V. Moodley dated 18 March 2020. In my view, the statement, particularly that dated 29 April 2019, seeks more to explain and support the basis of the submissions in this matter than they do to provide information. This is particularly so noting that, at the time of the accident, the claimant had not been gainfully employed for about 4 years. The statements he provides are quite imprecise. After his coming to Australia in 2007, he was employed by Axe Group Pty Ltd on a "Section 457 Visa" which required him to be employed. He remained in this employment until about 2011. He states somewhat inexactly, in about 2010 and 2011 he was advised of work been done by a German company, SCIIL AG, which was contracted to provide work to RailCorp. Notwithstanding the assertions of the claimant in respect to his earnings, and he doesn't specifically state what his earnings were, his tax returns show that he was only earning about \$500 per week for the financial year 2010 and 2011.
9. Thereafter there have been no other tax returns which identify any earnings filed.
10. The claim form, completed by the claimant, states that he was "a software developer" and he had before tax earnings of \$2,800 per week and after tax earnings of \$1,800 per week.
11. This is clearly false. He was not working at the time of the accident. He has never demonstrated any earnings coming close to \$2,800 per week. In answer to the question "have you taken time off" he replied yes even though he had not worked for some years before the accident.
12. When asked about this at the assessment conference the claimant was evasive and not responsive to the question. He simply observed that he put down \$2,800 because "this was the sum I was looking for" in any employment.
13. I accept the insurer's submission that the claimant was intending to provide incorrect information in the claim form to support a claim for economic loss.
14. The insurer also drew attention to numerous histories in the medical material in which the claimant identified as a self employed software developer at the time of the accident.
15. A further factor which in respect to this matter is the claimant's somewhat vague history in respect to the significant amount of time he has spent overseas. Quite reasonably he returns to Lithuania regularly to see his elderly mother and reconnect with family and friends. Indeed the claimant met his current wife on one such trip following the accident.

16. In the years prior to the accident the claimant was working to develop a software package as an application. There is no material in respect to the time this was taking. The claimant agrees that these endeavours did not create any commercially viable application nor result in the generation of any income.
17. Put simply I do not find the claimant to be an accurate historian. There are basically no documents post-dating 2011 which support or give rise to any earnings or attempt to return to the workforce. He has done voluntary work for the Lithuanian community in Australia, there are references to attempts to find work and undertake tasks whilst overseas but, tellingly, there are no documents in support of these contentions.
18. The claim form which he completed is incorrect. The history he has given to numerous doctors is confused to the point where, as it is noted in the report of V. Moodley dated 18 March 2020, notes that:

“he endorsed a high frequency of alleged symptoms that are highly atypical in patients with genuine psychiatric and cognitive disorders, raising the likelihood of exaggeration of psychological complaints.”

19. The submissions made on behalf of the claimant do not reflect the claimant’s evidence or the material provided in this matter. Notwithstanding that the claimant was not working at the time of the accident, and had not worked for some years prior to the accident, the claim for past economic loss is simply a claim for \$125,000 per annum from the date of accident to date and continuing. This is seemingly calculated on a figure obtained from a brochure identifying what IT workers can earn. The materials do not support this contention. Indeed there is basically no material upon which any calculation can be made in respect to the claimant’s earnings noting that he has overstated his earnings as to what he made in the past, has not readily investigated his capacity to undertake any employment since the accident nor is there any suggestion or intention from the claimant that he would seek to return to some type of employment other than his statement that:

“I have some cautious optimism for the future but remain very uncertain as to what the future holds.”

20. I do not accept the statements and assertions made by the claimant other than where they are supported specifically by the medical material.

## Medical evidence

21. The claimant stated that following the accident he suffered physical injuries to his back and right leg. He does state that the physical injuries have, to a large extent resolved. Particularly, the injury to his left big toe which is now described as "a lower level of discomfort". His right elbow seems to have resolved. The injuries to his thumbs "got better over time". Most importantly in respect to the psychological injury which gives rise to his entitlement to compensation for non-economic loss, he states:

"very quickly quite and intense emotional reaction to having been injured".

That said, it is a somewhat complex matter in so far as the claimant certainly had some pre-existing psychological issues and evolution of his condition is somewhat complex. He notes having panic attacks, being physically overwhelmed with nauseous feelings and fear and suffering from depression. He goes on to state that:

"I certainly felt better for the emotional support which Juste (the claimant's wife) gave me and has given me since that time. However, it was not all one way traffic. I also had feelings of guilt relating to the burden which I was on her and fear of my terrible state becoming such a burden that it would split the relationship."

22. In the period leading up to the accident the claimant was receiving psychological treatment for what was described on 2/1/14 as relationship issues. He had previously been provided a mental health care plan in 2011 noting problems sleeping, focusing, decreased appetite, scared of dying. He was prescribed anti-depressants. Shortly before Christmas in 2013 it was recommended that he continue to receive psychological treatment. Quite clearly the claimant had previously suffered psychological injuries as the material bears out.

23. The claimant had presented at S. Sutton in 2010 regarding anxiety and depression. This continued on and off, until February 2014. Thereafter he returned to his treating psychologist, Steven Sutton, in about March 2018. The report of the review panel dated 30 September 2022 notes the claimant:

"was experiencing lower grade depressive illness prior to the subject accident; however, the accident has significantly exacerbated his depressive disorder."

24. The report of Dr J. Roberts dated 18 February 2019 stated:

“I would have anticipated with the eflux of time that improvement would have taken place to a more substantial degree than described by Mr Stonis”.

25. This report notes the earlier finding of the “superimposition upon a pre-existing major depressive disorder of an adjustment disorder with anxiety and depression”.

26. The review of medical assessment dated 30 September 2022 similarly states:

“Mr Stonis was experiencing lower grade depressive illness prior to the subject accident; however, the accident has significantly exacerbated his depressive disorder.”

27. Whilst the insurer submits that the claimant ought not be accepted in his assertions of disability in my view there is sufficient medical to support the finding of the review panel. That said, as the report of Dr Moodley dated 18 March 2020 notes the claimant has travelled extensively since the accident, there appear to be elements of exaggeration and secondary gain in his reporting of his disability, there are issues in respect to the claimant’s credit and credibility which colour the medical material and there are pre-existing psychological and psychiatric difficulties which have been exacerbated by the accident not caused by the accident.

28. Overall I accept that the claimant is suffering a psychological sequelae following the accident which has had an adverse effect on his employability albeit it not to the extent alleged by the claimant. Additionally, this psychological injury is one which would reasonably give rise to a need for future treatment.

### **Non-economic Loss**

29. The claimant does suffer from some ongoing psychological disturbances consequent on the motor vehicle accident.

30. Whilst the overall effect of these is somewhat difficult to ascertain noting the very divergent nature of the medical material and the somewhat confused and uncertain evidence of the claimant it is a matter which gives rise to an entitlement for non-economic loss.

31. I reject the only submission made on the part of the claimant that an allowance of \$500,000 ought to be made for non-economic loss. That said, I also consider that the suggested figure of \$100,000 submitted by the insurer could also be fairly described as being too low.

32. In all the circumstances and having considered the findings I have made in respect to the claimant and the totality of medical material I assess non-economic loss in the sum of **\$150,000**.

#### **Past Economic Loss**

33. The claimant is somewhat uncertain in respect to what his employment intentions were at the time of the accident. He states that he:

“had an idea to write a book about recovery from depression”.

Other than this he states in his statement of 29 April 2019 he says:

“My long term intention was to re-enter and remain in the paid workforce as an IT software developer – most probably on a contract basis.”

34. The report of S. Sutton dated 16/11/19, noting the history given by the claimant on 13/1/14 states:

“they were contemplating 6 months in Australia and 6 months in Europe each year?”

35. There were no submissions that addressed a physical inability to work. Indeed the report of Associate Professor I. Dickinson dated 26 October 2017 states:

“Mr Stonis has no physical disability in relation his work.”

He goes on to say:

"Mr Stonis had not been employed for other reasons and continues to be unemployed. He had significant psychological issues."

36. I do not accept the submission made on behalf of the claimant that he was imminently return to the workforce with earnings in the order of \$185,000. The material he relies upon shows a peak in his earnings in the financial year ending 30 June 2009 of \$87,000. Prior to this he earned \$25,000 in 2008, \$50,000 in the year ending 30 June 2010 and about \$10,000 in the year ending 30 June 2011.
37. The medical material does support the claimant's contention that he has suffered an impaired earning capacity consequent on the psychological sequelae of the accident. Whilst I do not accept the claimant's submissions I do accept that, sometime post March 2015, but for the accident, he most likely would have sought to earn some money in some capacity, presumably working in IT. I do not consider it can be put any higher than this.
38. Further the claimant was not working at the time of the accident because he had some ongoing psychological injuries, was uncertain as to what his employment intentions in Australia would have been (noting he went overseas very shortly after the accident for a protracted period of time) and nor has there been any real attempt by the claimant to investigate his ongoing work capacity in any event.
39. Noting these factors, and noting that there has been a little over 8 years since the accident I consider it appropriate to provide a buffer for the diminished work opportunity suffered by the claimant consequent on his psychological injury.
40. Whilst these would have been minimal in the years following the accident it is more likely than not that he would have sought some employment and the psychological injuries he suffers from have interfered, to some extent, with his intention. In all the circumstances I assess the claimant's past economic loss in the sum of **\$100,000**. Noting the claimant was always intending to remain as a contractor this figure would include any loss of employer superannuation contributions which would otherwise have accrued.

#### **Future Economic Loss**

41. There is no precise calculation which can appropriately made in respect to future economic loss.
42. Firstly, I note the claimant has other factors which have interfered with his earning capacity including pre-existing disabilities.

43. Secondly, I do not accept the claimant's contention that he would simply have returned to full time employment in Australia and continued to work in such a way.
44. Thirdly, the claimant clearly does have a residual earning capacity although this has not been investigated. It may be with some further treatment or the passing of time he may seek to return to the workforce. Whilst he does have this earning capacity it is somewhat vague as no genuine attempt at employment has been made since about 4 years prior to the accident.
45. I note the claimant would reasonably have about 20 years left in the work force.
46. I consider it appropriate to allow economic loss loosely based on a small diminution of his earning capacity of a bit over \$200 per week. This is not so much a calculation as an estimate based on between 10 and 20% impaired earning capacity consequent on the motor vehicle accident. Such a loss of earning loss of capacity already takes into account the vicissitudes as of other factors. It is also appropriate the future is more likely than not to have allowed for some accrual of employer contributions to superannuation.
47. Noting these factors as well as noting the very vagaries of such employment I assess the claimant's future economic loss, including loss of superannuation benefits in the sum of **\$150,000.**

#### **Past treatment expenses**

48. The parties could not agree on past treatment expenses. The insurer noted it has made Section 83 payments totalling \$35.05. The claimant submitted that past treatment expenses ought to be allowed in the sum of \$11,245.85 together with a further figure of \$3,938.78 based on the claimant's statements. At the assessment conference the insurer agreed that past treatment expenses ought to total \$5,929.40 and disputed the other items.
49. Following the assessment conference the claimant has forwarded some clarifications and notes of dispute in respect to invoices which do not throw much light on what ought to be allowed. It did note that dental was no longer being pursued, numerous invoices were so faded as to be not decipherable, some items which were included by mistake and thereafter simply contain a list of doctors and the treatment with comments from the notes but no indication as to the amounts being sought. This is followed by an assertion that Medicare expenses totalling \$11,245.85 be allowed together with further out of pocket expenses totalling \$1,248.36.
50. I am unable to clearly or fully identify what the claimant seeks in respect to past treatment. The Medicare material does not, such as is available and commented on, provide any insight to this. The notes in respect to psychologist are simply noted as clarification. The
- Personal Injury Commission || Sensitive – Personal and Health Information

imaging would seem to be in dispute primarily on the basis that they are undertaken several years following the accident and none of the material provided by the claimant, seeking to clarify or provide further information in respect to the matters in dispute, identifies the actual quantum of the treatment expense.

51. It is for the claimant to establish past treatment expenses. The very significant amount of documentation and commentary provided by the claimant in respect to past treatment expenses does not provide sufficient material, nor any precise calculations, such as will allow me to make any informed or precise calculations in respect to past treatment expenses. Noting these circumstances, and noting the requirement for precision in identifying those treatment expenses which are allowed over the objections of the insurer I am not satisfied that the claimant has made out any further treatment expenses other than that conceded by the insurer.

52. Accordingly I allow past treatment expenses in the sum of **\$5,929.40** which includes the Section 83 payments of \$35.05.

#### **Future treatment expenses**

53. The claimant submitted that future treatment expenses ought to be allowed in the sum of \$31,000. The insurer submitted that the material does not bear out a need for any ongoing treatment in respect to the sequelae of the motor vehicle accident.

54. That said, the accepted medical material does support the claimant's contention that he has a psychological injury and it is reasonable that such an injury be treated. That said, it is very difficult to ascertain what type of treatment would be required noting the very divergent medical material and the pre-existing psychological condition from which the claimant suffered.

55. The report of S. Sutton dated 16/11/19 notes a need for supportive counselling and possibly an intensive therapy program which was identified but not undertaken by the claimant. The submissions noted that he was seeing a trainee psychologist.

56. Noting this is the only treatment and noting the somewhat uncertain regime in respect to the amount of future treatment I accept the insurer's submission that future treatment ought to be allowed as a very modest sum.

57. In all the circumstances I assess the claimant's future treatment needs in the sum of **\$5,000**.

## Future Care

58. The claimant did not withdraw the application for future domestic assistance. That is, the submission that his assistance has exceeded the threshold of 6 hours per week and, presumably, will continue beyond this threshold. The amount of \$75,000 was submitted.
59. I do not accept the submission that any allowance ought to be made for future commercial assistance. In particular I note the general tenor of the medical material, in particular the lack of any significant ongoing physical difficulties, and concur with the insurer's submission that there is insufficient medical material to make out a need for domestic assistance beyond the 6 hour per week threshold. Further, I note at the assessment conference the claimant agreed that he can cook - very rarely, shop - very rarely and, when asked if he had used a vacuum cleaner stated:

"I don't remember I don't know".

60. He indicated that he is unable to garden although conceded at the assessment conference that the "garden" was some potplants on a balcony.
61. I am not satisfied the material supports a claim for future commercial assistance.
62. Accordingly, I assess the claimant's future commercial assistance at **Nil**.

## Assessment of Damages Summary

63. I assess the claim as follows on the findings set out above:

Non-economic loss	\$150,000.00
Economic losses	
• Past loss of earnings (incl. superannuation and <i>Fox v Wood</i> )	\$100,000.00
• Future loss of earnings (incl. superannuation)	\$150,000.00
• Past treatment expenses	\$ 5,929.40
• Future treatment expenses	\$ 5,000.00
• Future domestic assistance	Nil
Total of economic losses and non-economic loss	\$410,929.40
<b>Total Damages Assessed</b>	<b>\$410,929.40</b>

The claimant's economic loss is to be reduced by, and the insurer is to have credit for, the following payments:

Statutory benefit payments	\$35.05
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### **Conclusion**

### **Costs and Disbursements**

64. I assess the Claimant's legal costs and disbursements in accordance with s 149 and 150 of *the Act and the Motor Accidents Compensation Regulation 2015* in accordance with the attached sheet in the sum of **\$41,319.30**.
65. On the issue of liability for the claim, QBE's insured owed a duty of care to the Claimant, breached that duty of care and the Claimant sustained injury loss and damage as a result of that breach of duty.
66. **Under sub-sections 94 (3) and 94 (4) of the *Motor Accidents Compensation Act 1999* (the Act), I specify the amount of damages for this claim as \$410,929.40.**

**Member Hugh Macken**

**Motor Accidents Division**

**Personal Injury Commission**



New South Wales

# Motor Accidents Compensation Regulation 2015

under the

Motor Accidents Compensation Act 1999

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Motor Accidents Compensation Act 1999*.

DOMINIC PERROTTET, MP  
Minister for Finance and Services

## Explanatory note

The object of this Regulation is to repeal and remake, with some changes, the provisions of the *Motor Accidents Compensation Regulation 2005*, which would otherwise be repealed on 1 September 2015 by section 10 (2) of the *Subordinate Legislation Act 1989*.

The Regulation provides for the following matters:

- (a) the maximum costs for legal services provided in connection with claims relating to motor accidents covered by the compulsory third-party insurance scheme under the *Motor Accidents Compensation Act 1999 (the Act)*,
- (b) the maximum fees for medico-legal services and expert evidence provided in respect of claims,
- (c) the assessment of claims by claims assessors,
- (d) other matters relating to costs including what is to occur if a claimant fails to attend a medical assessment, the rate of certain travel expenses and providing for GST to be taken into account,
- (e) the maximum amounts payable by insurers for certain treatment provided to claimants,
- (f) the classes of motor vehicles that are taken to be subject to an unregistered vehicle permit for the purposes of section 10A (Treatment of certain vehicles for purposes of third-party policy) of the Act,
- (g) the time in which an insurer must pay an assessed amount of damages to a claimant,
- (h) prescribing the Australian Prudential Regulation Authority as an authority to which protected information may be divulged for the purposes of section 217 (Secrecy of information obtained from or relating to insurers or proposed insurers) of the Act,
- (i) providing for information about settlement amounts, deductions and amounts paid to claimants to be disclosed to the Motor Accidents Authority by legal practitioners,
- (j) creating a duty for legal practitioners not to give or receive fees or other consideration in respect of referrals in relation to claims,
- (k) savings and transitional matters.

This Regulation is made under the *Motor Accidents Compensation Act 1999*, including sections 10A (1) (c), 56 (3), 64 (5), 84 (6), 86 (5), 95 (2A) and 97, Chapter 6, sections 217 (2) (b) and 228 (the general regulation-making power) and clause 2 of Schedule 5.

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## Motor Accidents Compensation Regulation 2015

under the

Motor Accidents Compensation Act 1999

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Motor Accidents Compensation Regulation 2015*.

#### 2 Commencement

This Regulation commences on 1 April 2015 and is required to be published on the NSW legislation website.

**Note.** This Regulation repeals and replaces the *Motor Accidents Compensation Regulation 2005*, which would otherwise be repealed on 1 September 2015 by section 10 (2) of the *Subordinate Legislation Act 1989*.

#### 3 Definitions

(1) In this Regulation:

**costs breakdown** means a document that sets out (in a form approved by the Authority and published in the Gazette) the total amount paid by an insurer in finalising a claim, all deductions (including all legal costs and disbursements) in relation to the claim and the final amount paid to the claimant.

**health practitioner** has the same meaning as in the Health Practitioner Regulation National Law.

**the Act** means the *Motor Accidents Compensation Act 1999*.

(2) Notes included in this Regulation do not form part of this Regulation.

## Part 2 Costs

### Division 1 Preliminary

#### 4 Costs not regulated by this Part

Costs referred to in this Part (Division 4 excepted) do not include any of the following:

- (a) fees for accident investigators' reports or accident reconstruction reports,
- (b) fees for accountants' reports,
- (c) fees for reports from health practitioners (other than medical practitioners),
- (d) fees for other professional reports relating to treatment or rehabilitation (for example, architects' reports concerning house modifications),
- (e) fees for interpreter or translation services,
- (f) court fees,
- (g) travel costs and expenses of the claimant for attendance at the Claims Assessment and Resolution Service or a court,
- (h) witness expenses at the Claims Assessment and Resolution Service or a court.

### Division 2 Maximum legal and other costs

#### 5 Application of Division

- (1) This Division is made under section 149 of the Act and applies to the following costs payable on a party and party basis, on a practitioner and client basis or on any other basis:

- (a) legal costs,
- (b) costs for matters that are not legal services but are related to proceedings in a motor accidents matter.

**Note.** Section 149 (2) of the Act provides that a legal practitioner is not entitled to be paid or recover for a legal service or other matter an amount that exceeds any maximum costs fixed for the service or matter by regulations under section 149.

- (2) This Division does not affect costs recovered before 17 December 1999 or for which a bill of costs was issued before that day.

**Note.** Section 147 (2) of the Act provides that expressions in Chapter 6 (Costs) of that Act (and consequently expressions used in this Part) have the same meaning as in Part 3.2 (Costs disclosure and assessment) of the *Legal Profession Act 2004*, except where otherwise provided in that Chapter.

#### 6 Fixing of maximum costs recoverable by legal practitioners

- (1) Except as otherwise provided by this Part, the costs set out in Schedule 1 are the maximum costs for:

- (a) legal services provided by a legal practitioner to a claimant or to an insurer in a motor accidents matter, and
- (b) matters that are not legal services but are related to a motor accidents matter.

- (2) If there is a change in the legal practitioner retained by a claimant or insurer in a motor accidents matter, the relevant costs are to be apportioned between the legal practitioners concerned.

- (3) If there is a dispute as to such an apportionment, either legal practitioner concerned (or the client claimant or insurer concerned) may refer the dispute to a claims

assessor for determination (unless the dispute arose in a matter in which, under section 92 of the Act, the claim is exempt from assessment).

- (4) A legal practitioner has the same right of appeal against a determination made under subclause (3) as the practitioner would have under section 384 or 385 of the *Legal Profession Act 2004* if the determination were a determination made by a costs assessor under Part 3.2 of that Act in relation to a bill of costs.

#### 7 Excluded matters

- (1) The maximum costs set out in Schedule 1 do not apply in respect of a matter in which, under section 92 of the Act, the claim is exempt from assessment.
- (2) An exclusion under this clause in respect of a matter involving a claim referred to in section 92 (1) (b) of the Act extends to any costs incurred before the matter became exempt.

#### 8 Contracting out—practitioner and client costs

Schedule 1 does not apply to costs in a motor accidents matter to the extent that they are payable on a practitioner and client basis if:

- (a) an Australian legal practitioner makes a disclosure under Division 3 of Part 3.2 of the *Legal Profession Act 2004* to a party to the matter with respect to the costs, and
- (b) the practitioner enters into a costs agreement (other than a conditional costs agreement, within the meaning of that Part, that provides for the payment of a premium on the successful outcome of the matter concerned) with that party as to those costs in accordance with Division 5 of that Part, and
- (c) the practitioner, before entering into the costs agreement, advises the party (in a separate written document) that, even if costs are awarded in favour of the party, the party will be liable to pay such amount of the costs provided for in the costs agreement as exceeds the amount that would be payable under the Act in the absence of a costs agreement, and
- (d) the practitioner (but only if the party is a claimant) provides to the Authority, in the manner and time approved by the Authority, a costs breakdown in relation to the claim when the claim is finalised.

### Division 3 Medico-legal fees and expert witnesses

#### 9 Application of Division

This Division is made under section 150 of the Act and applies in respect of fees for the provision of medical reports, and appearances as witnesses, by medical practitioners.

**Note.** Section 150 (2) of the Act provides that a medical practitioner is not entitled to be paid or recover any fee for providing a service that exceeds any maximum fee fixed under section 150 for the provision of the service.

#### 10 Maximum fees recoverable by medical practitioner

- (1) The maximum fees for providing a service specified in Schedule 2 in relation to any motor accident are the fees set out in that Schedule for that service, except as otherwise provided by this Part.
- (2) A reference in that Schedule to a *report* means, if the MAA Medical Guidelines require medical reports to be in a particular form, a report in that form.
- (3) A claimant may not claim an amount set out in item 5 or 6 (relating to reports by attending medical practitioners) of Schedule 2 in respect of an initial report by an

attending medical practitioner unless the claimant has requested in writing that the insurer provide the report to the claimant and the insurer has failed to do so within a reasonable time.

- (4) This clause does not affect fees recovered before 17 December 1999 or for which a bill was issued before that day.

**11 Limit on costs for expert witnesses**

- (1) Costs are not to be included in an assessment or award of damages in respect of any expert witness giving evidence, or providing a report, on behalf of the claimant in relation to a claims assessment or in court proceedings under the Act, except for costs in respect of:
- (a) one medical expert in any specialty (unless there is a substantial issue as to a matter referred to in section 58 (1) (d) of the Act—in which case costs are payable in respect of 2 medical experts in any specialty relevant to the injury concerned), and
  - (b) 2 experts of any other kind.
- (2) Subclause (1) does not apply if the claims assessor or court concerned agrees that costs are payable in respect of a greater number of expert witnesses in the matter.
- (3) This clause extends to costs incurred in connection with medical assessments.

**Division 4 Assessment of claims**

**12 Assessment of costs by claims assessor**

- (1) In making an assessment and specifying damages under section 94 of the Act in respect of a claim, a claims assessor may include in the assessment an assessment of the claimant's costs (including costs for legal services referred to in Schedule 1 and fees for medico-legal services referred to in Schedule 2) in the matter.
- (2) An assessment of those costs may also be made (whether or not an assessment has been made under subclause (1)) if a court does not determine a matter after the issue of a certificate under section 94 of the Act but remits the matter to the Motor Accidents Claims Assessment and Resolution Service for further assessment.
- (3) In making an assessment under this clause, a claims assessor:
- (a) may have regard to the amount of any written offer of settlement made by either party to the matter, and
  - (b) must give effect to:
    - (i) any requirement of a court under section 151 (3) of the Act, and
    - (ii) clause 11 of this Regulation, and
  - (c) must have regard to the matters set out in section 363 of the *Legal Profession Act 2004*.
- (4) The amount of any assessment under this clause must not exceed the relevant amounts set out in Schedules 1 and 2.

**13 Assessment of costs to produce information**

A claims assessor may assess the reasonable costs in relation to the issuing of, or compliance with, a direction under section 100 of the Act.

**14 Appeals against assessment**

A claimant or an insurer (or a legal practitioner retained by a claimant or an insurer in respect of the relevant claim) has the same right of appeal against an assessment

made under this Division as the claimant, insurer or legal practitioner would have under section 384 or 385 of the *Legal Profession Act 2004* if the assessment were a determination made by a costs assessor under Part 3.2 of that Act in relation to a bill of costs.

**15 Costs where insurer does not accept assessed amount of damages**

- (1) This clause applies if an assessment is made under Part 4.4 of the Act of the amount of damages for liability under a claim and the insurer does not accept that liability under the claim within 21 days after the certificate of assessment is issued.
- (2) In such a case and subject to any direction of a court as to costs, the insurer is liable to pay all the costs of the claimant incurred in the matter after the certificate of assessment is issued and the maximum costs set out in this Regulation do not apply in respect of those costs.
- (3) In this clause:  
*costs of the claimant* means the costs of the claimant payable on a party and party basis, including any court fees prescribed under section 154 of the Act.

**Division 5 Other costs matters**

**16 Non-attendance or cancellation of appointment**

If the Authority schedules an appointment for a medical assessment under Part 3.4 of the Act and the claimant, without reasonable excuse:

- (a) fails to attend the appointment, or
  - (b) cancels the appointment within 72 hours of the scheduled time,
- the Authority may recover from the claimant all or part of the costs reasonably incurred by the Authority as a consequence of the non-attendance or cancellation.

**17 Private motor vehicle travel expenses incurred by injured persons**

- (1) For the purposes of sections 64 (5), 84 (6) and 86 (5) of the Act, the cost of travel by a private motor vehicle for the purposes of:
  - (a) attending a medical assessment under Part 3.4 of the Act, or
  - (b) obtaining rehabilitation services under Part 4.3 of the Act, or
  - (c) attending a medical examination or rehabilitation assessment under Part 4.3 of the Act,is to be calculated at the rate of \$0.55 per kilometre.

- (2) This clause extends to claims pending on the commencement of this clause.

**18 GST may be added to costs**

- (1) Despite the other provisions of this Part, a cost fixed by this Part may be increased by the amount of any GST payable in respect of the service to which the cost relates, and the cost as so increased is taken to be the cost fixed by this Part.
- (2) This clause does not permit a legal practitioner or medical practitioner to charge or recover, in respect of GST payable in respect of a service, an amount that is greater than 10% of the maximum amount payable under this Part to the legal practitioner or medical practitioner in respect of the legal or other service apart from this clause.
- (3) In this clause:  
*GST* has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

## Part 3 Miscellaneous

### 19 Maximum amounts payable by insurer for certain treatment

- (1) This clause applies in relation to treatment to which section 56 of the Act applies, being treatment:
  - (a) that is provided to an injured person by a health care professional, and
  - (b) in respect of which a fee is specified in the AMA List.
- (2) However, this clause does not apply in relation to treatment received by an injured person before 17 December 1999.
- (3) For the purposes of section 56 (3) of the Act, the maximum amount for which an insurer is liable in respect of any claim for fees payable for treatment to which this clause applies is the amount listed, in respect of the treatment concerned, in the AMA List.

**Note.** Section 56 of the Act does not apply to treatment that is provided at a hospital (whether to an in-patient or an out-patient) and for which any payment is required to be made to the hospital and not to the provider of the treatment. The section does apply to the fee payable to a private hospital for any treatment at the hospital.

- (4) In this clause:

**AMA List** means the document called *List of Medical Services and Fees* published by the Australian Medical Association and dated 1 November 2014 as amended or replaced, from time to time, by a document that:

- (a) has been published by the Australian Medical Association, as an amendment to, or replacement of, the AMA List, and
- (b) has been recognised by the Authority, by notice published in the Gazette.

### 20 Motor vehicles subject to unregistered vehicle permits

For the purposes of section 10A (1) (c) of the Act, the following classes of motor vehicles are prescribed:

- (a) motor vehicles, in respect of which approval for the placement of identification plates has not been given under section 10A of the *Motor Vehicle Standards Act 1989* of the Commonwealth and that:
  - (i) are used to perform agricultural tasks (for example, tractors and harvesters), or
  - (ii) are designed for use solely over snow (but only during such time as the motor vehicles are within the boundaries of Kosciuszko National Park),
- (b) motor vehicles that were manufactured 30 or more years ago and are used on a road solely in the course of, or as an incident to, an activity of an organisation that is identified in the records of RMS as an historic vehicle club,
- (c) motor vehicles that weigh more than 250 kilograms when unladen and are designed or used solely for cutting grass or for purposes incidental to cutting grass,
- (d) motor vehicles that are used solely for the purposes of road construction, maintenance or repair and are not used on a road otherwise than while at, or proceeding to or returning from, the place where the road construction, maintenance or repair is carried out,
- (e) motor vehicles that are subject to a conditional registration under the *Road Transport Act 2013* on the basis that they are:
  - (i) classified by RMS as earthwork plant or industrial plant, or
  - (ii) used solely on Stockton Beach for recreation purposes,

- (f) motor vehicles that are motorised buggies or carts and are designed and used for the purpose of:
  - (i) carrying golfers, spectators or golfing equipment on a golf course, or
  - (ii) carrying persons in a holiday resort or retirement village or the like,
- (g) motor vehicles that are designed or used solely for the conveyance of a person with a disability that substantially impairs the person's mobility and that are capable of travelling at more than 10 kilometres an hour,
- (h) motor vehicles that are trackless trains,
- (i) any other motor vehicles that have been granted full exemption from:
  - (i) motor vehicle tax within the meaning of the *Motor Vehicles Taxation Act 1988* (under section 17 (1) (p) of that Act), or
  - (ii) registration charges within the meaning of the *Road Transport Act 2013* (under clause 76J (2) of the *Road Transport (Vehicle Registration) Regulation 2007*).

**21 Time for payment by insurer of assessed amount of damages**

- (1) For the purposes of section 95 (2A) of the Act, an insurer must pay an assessed amount of damages to the claimant concerned within 20 business days of the claimant's communication of acceptance of the assessment.
- (2) Despite subclause (1), if an insurer is required by law to make a deduction from the assessed amount of damages payable to the claimant, the insurer must:
  - (a) notify the person to whom the deduction is payable, and
  - (b) request advice as to the amount of the deduction that is required from the person to whom the deduction is payable within 10 business days of the claimant's communication of acceptance of the assessment, and
  - (c) on receipt of that advice, pay the balance of the assessed amount of damages to the claimant within 20 business days of the date of the advice or, if more than one such person exists, within 20 business days of the receipt of all such advice relating to the assessed amount of damages.
- (3) Interest is payable by the insurer on so much of the assessed amount of damages as remains unpaid after the end of the relevant period for payment of the assessed amount of damages. The rate of any such interest is 75% of the rate prescribed for the purposes of section 101 of the *Civil Procedure Act 2005* for the period concerned.

**22 Prescribed authority for access to protected information**

For the purposes of section 217 (2) (b) of the Act, the Australian Prudential Regulation Authority is a prescribed authority.

**23 Determining efficiency of scheme**

- (1) The object of this clause is to enable the Authority to obtain information about costs in order to advise the Minister as to the efficiency and effectiveness of the motor accidents scheme under the Act.
- (2) It is the duty of a legal practitioner who represents a claimant when a claim is finalised (regardless of whether damages are to be paid to the claimant) to ensure that the Authority is provided, in the manner and time approved by the Authority, with a costs breakdown in relation to the claim.
- (3) The duty in subclause (2) applies to all claims regardless of whether the claim is exempt from assessment under section 92 of the Act or whether there has been contracting out under clause 8 of this Regulation. However, the duty does not apply

to a claim in a motor accidents matter if the claimant incurs no legal fees in the matter.

- (4) If a barrister and a solicitor act for a claimant, the duty in subclause (2) falls on the solicitor and not the barrister.
- (5) The Authority may provide any information contained in a costs breakdown to the Minister and may, if directed to do so by the Minister, publicise statistics produced from any such information.
- (6) The Authority may forward to the Legal Services Commissioner any information obtained under this clause.

#### 24 Referral fees

- (1) A legal practitioner has a duty not to receive consideration for referring a claimant (who is represented by the legal practitioner) to a person for the purposes of a service being provided in respect of the claimant's claim.
- (2) A legal practitioner is taken to receive consideration if a close associate of the legal practitioner receives the consideration.
- (3) A legal practitioner has a duty not to give consideration for the referral of a person to the legal practitioner for the purposes of the legal practitioner representing the person in relation to a claim.
- (4) A legal practitioner is taken to give consideration if a close associate of the legal practitioner gives the consideration.
- (5) In this clause:  
*close associate* of a legal practitioner means the following:
  - (a) an employer of the legal practitioner (including, if the employer is a corporation, a director of the corporation),
  - (b) a partner of the legal practitioner,
  - (c) an employee or agent of the legal practitioner or of a person referred to in paragraph (a) or (b),
  - (d) a family member of the legal practitioner.*consideration* includes a fee or any other benefit but does not include hospitality that is reasonable in the circumstances.

#### 25 Repeal

The *Motor Accidents Compensation Regulation 2005* is repealed.

## Schedule 1 Maximum costs for legal services

### 1 Costs determined by reference to certain stages in the matter (Clause 6 (1))

- (1) The maximum costs for legal services provided for a stage of a motor accidents matter set out in Column 2 of Table A to this clause are the costs set out in Column 3 opposite that stage (or, if the stage is described by reference to different factors, the costs calculated in accordance with the provisions of Columns 2 and 3 relating to those factors).
- (2) However, if a legal practitioner was first retained in the matter after a certificate as to the claims assessment was issued under section 94 of the Act, the maximum costs for legal services provided for a stage set out in Column 2 of Table B to this clause are the costs set out in Column 3 opposite that stage (or, if the stage is described by reference to different factors, the costs calculated in accordance with the provisions of Columns 2 and 3 relating to those factors).
- (3) Costs may be charged for more than one stage described in this Schedule.
- (4) Other than stage 1 in the Tables to this clause, each stage specifies the maximum costs payable for all legal services provided in the period commencing on the occurrence of one specified event and concluding on the occurrence of another specified event or the resolution of the claim (whichever occurs first).

**Table A**

Column 1	Column 2	Column 3
Stage		\$
1	For assistance in completing an accident notification form (except, in respect of an Australian legal practitioner acting for a claimant, in so far as the assistance forms part of stage 2)	nil
2	From the acceptance of the retainer to the preparation and service of a notice of claim under section 72 of the Act (including the provision of all relevant particulars about the claim to the insurer, even if those particulars are requested after the claim is served):	
	(a) in the case of an Australian legal practitioner acting for a claimant, or	292
	(b) in the case of an Australian legal practitioner acting for an insurer	nil
3	From service of the notice of claim under section 72 of the Act to the preparation and service of a response to the insurer's offer of settlement under section 82 of the Act:	
	(a) in the case of an Australian legal practitioner acting for a claimant, or	432
	(b) in the case of an Australian legal practitioner acting for an insurer	nil
4	If resolution of the claim occurs without the issue of a certificate under section 94 of the Act—from service of the response to the insurer's offer of settlement under section 82 of the Act to resolution of the claim (in addition to the \$724 specified for stages 2 and 3 if chargeable):	
	(a) if the amount to be paid in resolution of the claim (the <i>resolution amount</i> ) is not more than \$20,000 and the insurer wholly admitted liability for the claim, or	724

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 Schedule 1 Maximum costs for legal services

Column 1 Stage	Column 2	Column 3 \$
(b)	if the resolution amount is not more than \$20,000 and the insurer did not wholly admit liability for the claim—for each dollar of the settlement amount, or	0.10
(c)	if the resolution amount is more than \$20,000 but not more than \$50,000 and the insurer wholly admitted liability for the claim:	
	(i) base amount, and	724
	(ii) for each dollar of the resolution amount over \$20,000, or	0.12
(d)	if the resolution amount is more than \$20,000 but not more than \$50,000 and the insurer did not wholly admit liability for the claim:	
	(i) base amount, and	2,592
	(ii) for each dollar of the resolution amount over \$20,000, or	0.12
(e)	if the resolution amount is more than \$50,000 but not more than \$100,000 and the insurer wholly admitted liability for the claim:	
	(i) base amount, and	5,184
	(ii) for each dollar of the resolution amount over \$50,000, or	0.10
(f)	if the resolution amount is more than \$50,000 but not more than \$100,000 and the insurer did not wholly admit liability for the claim:	
	(i) base amount, and	7,128
	(ii) for each dollar of the resolution amount over \$50,000, or	0.10
(g)	if the resolution amount is more than \$100,000 and the insurer wholly admitted liability for the claim:	
	(i) base amount, and	11,448
	(ii) for each dollar of the resolution amount over \$100,000, or	0.02
(h)	if the resolution amount is more than \$100,000 and the insurer did not wholly admit liability for the claim:	
	(i) base amount, and	13,392
	(ii) for each dollar of the resolution amount over \$100,000	0.02
	If resolution of the claim occurs after the issue of a certificate under section 94 of the Act but without the commencement of court proceedings—from the issue of the certificate to finalisation of the matter:	
(a)	an amount determined, in accordance with stage 4, by reference to the amount of the assessment as if that assessment were the resolution amount referred to in stage 4, and	as per stage 4

5

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 Schedule 1 Maximum costs for legal services

Column 1	Column 2	Column 3
Stage		\$
	(b) for each dollar of the assessment amount	0.02
6	If the matter is finalised after the commencement of court proceedings (whether by way of settlement or an award of damages)—from the issue of the certificate under section 94 of the Act to finalisation of the matter:	
	(a) an amount determined in accordance with stage 5, and	as per stage 5
	(b) for each dollar of the settlement or award amount	0.02

**Table B**

Column 1	Column 2	Column 3
Stage		\$
1	Advice on the issue of the certificate under section 94 of the Act	356
2	From the giving of the advice on the certificate issued under section 94 of the Act to finalisation of matter by settlement or award of damages (in addition to the \$356 specified for stage 1):	
	(a) if the settlement amount or award is not more than \$20,000, or	nil
	(b) if the settlement amount or award is more than \$20,000 but not more than \$50,000—for each dollar of the settlement amount or award over \$20,000, or	0.10
	(c) if the settlement amount or award is more than \$50,000 but not more than \$100,000:	
	(i) base amount, and	3,780
	(ii) for each dollar of the settlement amount or award over \$50,000, or	0.08
	(d) if the settlement amount or award is more than \$100,000:	
	(i) base amount, and	8,856
	(ii) for each dollar of the settlement amount or award over \$100,000	0.02

**2 Other costs for legal services**

- (1) Maximum costs for legal services provided in motor accidents matters may include (in addition to the costs for legal services provided for a stage in the matter, as referred to in clause 1) the costs set out in the Table to this clause.
- (2) However, an amount for the fees for senior counsel, or for more than one advocate, are not to be included unless the court so orders.

**Table**

**Nature of costs**

	\$
Costs associated with a medical dispute about a medical assessment matter under Part 3.4 of the Act, as allowed by the claims assessor or court:	
(a) maximum amount per medical dispute referred to the Authority under section 60 of the Act	1,000

Nature of costs	\$
(b) maximum amount per medical dispute referred to the proper officer of the Authority under section 62 of the Act (but only if further assessment occurs under that section)	1,000
(c) maximum amount per medical dispute referred to a review panel by the proper officer of the Authority under section 63 of the Act	1,000
(d) maximum amount per claim	2,500
Costs associated with a dispute referred to in section 96 of the Act, as allowed by the claims assessor:	
(a) maximum amount per dispute	1,200
(b) maximum amount per claim (not including any amount for a dispute referred to in section 96 (1) (e)-(g))	2,500
Cost of representation at an assessment conference under section 104 of the Act:	
(a) maximum flat fee	1,250
(b) maximum additional amount per hour for each hour in excess of 2 hours	300
Maximum costs for any interlocutory court proceedings	800
Cost of representation in court:	
(a) maximum per day for advocate other than senior counsel	2,500
(b) maximum per day for senior counsel	3,550
Cost of conference directly related to an assessment of the claim or a court hearing, maximum per hour	300

### 3 Country loadings

- (1) An advocate whose principal chambers or offices are in the Sydney Metropolitan area is entitled, in respect of proceedings heard or partially heard in a town outside that area, to a loading for that town in accordance with the Table to this clause. If proceedings take place at 2 or more towns outside that area, the loading payable is that appropriate to the town that is the farther or farthest from those chambers or offices.
- (2) An advocate whose principal chambers or offices are in a town outside the Sydney Metropolitan area is entitled, in respect of proceedings heard or partially heard in the Sydney Metropolitan area, to a loading for that town in accordance with the Table to this clause.
- (3) An advocate whose principal chambers or offices are in a town outside the Sydney Metropolitan area is entitled, in respect of proceedings heard or partially heard at another such town, to a loading for that other town in accordance with the Table to this clause. If proceedings take place at 2 or more towns outside that area, the loading payable is that appropriate to the town that is the farther or farthest from those chambers or offices.
- (4) For the purposes of this clause, if a town is not included in the Table to this clause, the loading for that town is to be the loading for the nearest town that is so included.
- (5) If an advocate holds more than one brief in respect of proceedings heard at a place on any one day and a loading is applicable under this clause, the loading is to be divided equally between those briefs in respect of which an advocate's fees are awarded or payable.

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 Schedule 1 Maximum costs for legal services

<b>Table Town</b>	<b>Maximum loading \$</b>
Albury	1,042
Armidale	956
Batemans Bay	954
Bathurst	756
Bega	1,150
Bourke	1,643
Broken Hill	1,774
Byron Bay	948
Campbelltown	91
Canberra and ACT	757
Casino	1,074
Cessnock	592
Cobar	1,511
Coffs Harbour	841
Condobolin	1,281
Cooma	1,270
Coonamble	1,225
Cootamundra	868
Cowra	669
Deniliquin	1,119
Dubbo	886
Forbes	886
Glen Innes	841
Gosford	254
Goulburn	625
Grafton	1,030
Griffith	847
Gundagai	994
Gunnedah	980
Hay	1,096
Inverell	984
Katoomba	345
Kempsey	906
Lismore	948
Lithgow	393
Maitland and East Maitland	592
Moree	887

Motor Accidents Compensation Regulation 2015 [NSW]  
 Schedule 1 Maximum costs for legal services

Town	Maximum loading \$
Moruya	721
Moss Vale	409
Mudgee	705
Murwillumbah	1,096
Muswellbrook	627
Narrabri	823
Narrandera	818
Newcastle	592
Nowra	592
Nyngan	1,407
Orange	674
Parkes	912
Penrith	91
Port Macquarie	764
Queanbeyan	757
Singleton	910
Tamworth	882
Taree	705
Tweed Heads	1,028
Wagga Wagga	783
Wentworth	1,662
Wollongong	375
Yass	666
Young	868

**4 Interstate loadings**

- (1) An advocate whose principal chambers or offices are in New South Wales is entitled, in respect of proceedings heard or partially heard in another State or Territory, to such reasonable loading as is determined by the court or the claims assessor.
- (2) If an advocate holds more than one brief in respect of proceedings heard at a place on any one day and a court or assessor determines that a loading is applicable under this clause, the loading is to be divided equally between those briefs in respect of which an advocate's fees are awarded or payable.

## Schedule 2 Maximum fees for medico-legal services

(Clause 10)

	\$
<b>Appearances as witnesses</b>	
1 Health practitioners called to give evidence other than expert evidence, per hour (or proportionately if not for a full hour) to a maximum of \$600	300
2 Health practitioners called to give expert evidence:	
(a) for the first one and a half hours (including time travelling to the court from the medical professional's home, hospital, place of practice, office or other place and return to that place from the court)	800
(b) for every full hour after the first hour and a half (or proportionately if not for a full hour)	300
	to a maximum of \$2,400
3 Travelling allowance in connection with appearance as witness—per kilometre	0.55
4 Accommodation and meals in connection with appearance as witness	reasonable costs
<b>Medical reports</b>	
5 Report made by an attending general practitioner:	
(a) if a re-examination of the patient is not required	250
(b) if a re-examination of the patient is required	330
6 Report made by an attending specialist:	
(a) if a re-examination of the patient is not required	800
(b) if a re-examination of the patient is required	1,200
7 Report made by a specialist who has not previously treated the patient (where both parties have not jointly agreed to the appointment of the specialist):	
(a) if an examination of the patient is not required	800
(b) if an examination of the patient is required	1,200
8 Report made by a specialist who has not previously treated the patient (where both parties have jointly agreed to the appointment of the specialist):	
(a) if an examination of the patient is not required	1,200
(b) if an examination of the patient is required	1,600
9 Charges for copying medical reports—per page	1
<b>Cancellation fee</b>	
10 Fee if appearance or medical report is not required	Not more than 50% of the relevant amount specified in this Table

## Schedule 3 Savings, transitional and other provisions

### Part 1 Provisions consequent on commencement of Motor Accidents Compensation Regulation (No 2) 1999

#### 1 Current third-party insurance policies issued under Motor Accidents Act 1988

- (1) A third-party policy of insurance issued under the *Motor Accidents Act 1988* that has effect for any period on or after 17 December 1999 is taken, in respect of any motor accident occurring on or after that day, to be a third-party policy of insurance issued under the *Motor Accidents Compensation Act 1999*.
- (2) Any such policy may be cancelled on or after 17 December 1999 only in accordance with the provisions of the *Motor Accidents Compensation Act 1999*.

**Note.** See clause 6 of the *Motor Accidents Compensation Regulation 1999* (now repealed) and section 30 (2) of the *Interpretation Act 1987* in relation to third-party policies of insurance issued under the *Motor Accidents Act 1988* and having effect for any part of the period commencing on 5 October 1999 (and ending on 17 December 1999).

### Part 2 Provision consequent on enactment of Motor Accidents Compensation Amendment Act 2006

#### 2 Payment of unpaid contributions under former section 214

Section 214 of the Act, as in force immediately before 18 August 2006, continues to apply to any unpaid contributions under that section as if the *Motor Accidents Compensation Amendment Act 2006* had not been enacted.

**Note.** Clause 23 of Schedule 5 to the Act provides that amounts received into the Fund in relation to such contributions are taken to have been received as if they had been collected by an insurer from persons to whom third-party policies have been issued.

### Part 3 Provisions consequent on enactment of Motor Accidents Compensation Amendment (Claims and Dispute Resolution) Act 2007

#### 3 Definition

In this Part:

*the 2007 amending Act* means the *Motor Accidents Compensation Amendment (Claims and Dispute Resolution) Act 2007*.

#### 4 Application of certain amendments to existing claims

The amendments to sections 96 (1) (d) and 123 of the Act by the 2007 amending Act extend to claims pending on the commencement of those amendments.

**Note.** The amendments to sections 96 (1) (d) and 123 of the Act also extend to claims made after the commencement of those amendments even if the motor accident concerned occurred before the commencement—see Part 6 of Schedule 5 to the Act.

#### 5 Damages in respect of motor accidents

The amendment to section 122 of the Act by the 2007 amending Act extends to:

- (a) claims made after the commencement of the amendment even if the motor accident concerned occurred before that commencement, and
- (b) claims pending on the commencement of the amendment.

#### 6 Medical assessment

The amendment to section 132 of the Act by the 2007 amending Act extends to a matter referred for assessment under Part 3.4 of the Act after the commencement of the amendment even if the motor accident concerned occurred before that commencement.

#### 7 Principal Claims Assessor

- (1) The person designated as Principal Claims Assessor under section 99 (3) of the Act and holding office as such immediately before the repeal of that subsection by the 2007 amending Act is taken to hold office as Principal Claims Assessor under section 99A of the Act (as inserted by the 2007 amending Act) and may continue to exercise all of the functions of Principal Claims Assessor until such time as the Minister appoints a person under section 99A of the Act.
- (2) The person appointed, or taken to have been appointed, as Principal Claims Assessor may exercise the functions of Principal Claims Assessor in respect of any claim whether it was referred for assessment under Part 4.4 of the Act before or after the commencement of this clause.

### Part 4 Provisions consequent on enactment of this Regulation

#### 8 General savings

Any act, matter or thing that, immediately before the repeal of the *Motor Accidents Compensation Regulation 2005*, had effect under that Regulation continues to have effect under this Regulation.

#### 9 Existing claims

- (1) In this clause:  
*existing claim* means a claim in a motor accidents matter that was lodged before the commencement of this Regulation and that has not been finalised.  
*the 2005 Regulation* means the *Motor Accidents Compensation Regulation 2005*.
- (2) Subject to the other provisions of this clause, this Regulation applies in respect of an existing claim.
- (3) Clause 15 of this Regulation applies to an existing claim only if a certificate of assessment has been issued under Part 4.4 of the Act in respect of the claim after the commencement of this Regulation.
- (4) Clause 24 of this Regulation applies to an existing claim but only in respect of a referral occurring after the commencement of this Regulation.
- (5) Clause 1 of Schedule 1 to this Regulation does not apply to an existing claim and Clause 1 of Schedule 1 to the 2005 Regulation continues to apply to an existing claim as if that clause had not been repealed.
- (6) In the application of clause 1 of Schedule 1 to the 2005 Regulation to an existing claim where contributory negligence is alleged, the words "denied liability for up to 25% of" are taken to be omitted wherever occurring in paragraphs (b), (d), (f) and (h) in Column 2 of the matter relating to stage 4 in Table A to that clause and the words "did not wholly admit liability for" are taken to be inserted instead.
- (7) Clause 2 of Schedule 1 to this Regulation applies to an existing claim only in respect of costs incurred after the commencement of this Regulation and clause 2 of Schedule 1 to the 2005 Regulation continues to apply to an existing claim in respect of costs incurred before that commencement as if that clause had not been repealed.

- (8) Costs are incurred for the purposes of subclause (7) as follows:
  - (a) for costs associated with a medical dispute or costs associated with a dispute referred to in section 96 of the Act—when the dispute is referred to the Authority or the proper officer of the Authority,
  - (b) for costs of representation at an assessment conference or in a court—when the assessment conference or court hearing occurs.
- (9) Clause 3 of Schedule 1 to this Regulation applies to an existing claim only in respect of any day (or part day) of a hearing occurring after the commencement of this Regulation and clause 3 of Schedule 1 to the 2005 Regulation continues to apply in respect of any day (or part day) of a hearing occurring before that commencement as if that clause had not been repealed.
- (10) Schedule 2 to this Regulation applies to an existing claim only in respect of costs incurred after the commencement of this Regulation and Schedule 2 to the 2005 Regulation continues to apply to an existing claim in respect of costs incurred before that commencement as if that Schedule had not been repealed.
- (11) Costs are incurred for the purposes of subclause (10) when the medico-legal service is first requested in writing.

**10 Provision of costs breakdown**

Clauses 8 (d) and 23 of this Regulation do not have effect unless the Authority has approved a form for the purposes of the definition of *costs breakdown* in clause 3 (1) of this Regulation.